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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,094	09/11/2003	George S. Reppas	4447-000013	5931
27572	7590	10/19/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/660,094	REPPAS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sunil Singh	3673	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9, 12-14, 16-20, 22-28 and 30-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 2, 5-9, 12-14, 16-20, 22, 23, 26-28, 30-36 and 39-45 is/are rejected.
- 7) ☒ Claim(s) 3, 24, 25, 37 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### DETAILED ACTION

**It should be noted that examiner has treated claims 26, 30-34 as if they depended from claim 22 since claim 21 was canceled.**

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 6212710).

Jones discloses a convertible furniture assembly comprising a frame assembly (4,6 and inside of members 12,14) having a vertically extending side members, an upper platform (10) pivotally coupled to said frame assembly for supporting a bedding component, said upper platform being moveable between a raised position and a lowered position, and a cabinet (18) formed integrally with said frame assembly, a table surface (top of members (12,14)), a cutout formed in said side member (this is considered as the opening between member 6 and the inside member of members 12,14).

3. Claims 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Condell (US 379449).

Condell discloses a convertible furniture assembly comprising a frame (A,D), upper platform (E), a headboard (K) and torsion system (I,L).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 5-9, 14, 16-17, 22-23, 26-28, 30-36, 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman '276 in view of Merrill (US 403851) or Merrill (US 403850) and George (US 4283811) or Berry et al. (US 3591247) or Japanese document (53-32258)

Sherman discloses a convertible furniture assembly comprising: a frame assembly (see Figs. 5, 10); an upper platform (38) pivotally (40) coupled to said frame assembly for supporting a bedding component, said upper platform being moveable between a raised position and a lowered position (see Figs. 5, 10), and a counterbalance member (42, 56, see col. 8 line 60+, see Fig. 7) coupled to said upper platform, said counterbalance member being raised between a first position and a second position in response to said upper platform moving from said raised position to said lowered position. A lower platform (64), a hinge (66, see col. 5 line 1, line 50, col. 6 line 20+) connecting the lower platform to the upper platform. A biasing spring member (58, col. 2 line 23+, col. 4 line 31+, col. 5 line 56+, col. 8 line 60+). Sherman discloses the invention substantially as claimed. However, Sherman lacks a headboard member being raised solely vertically between a first position and a second position in response to said upper platform moving from said raised position to said lowered position to counterbalance said upper

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platform and to oppose movement of said upper platform from said raised position to said lowered position. Further, Sherman is silent about using an L-shaped hinge. Merrill '851 and '850 both teach a headboard member (10,14) being raised solely vertically between a first position and a second position in response to said upper platform moving from said raised position to said lowered position to counterbalance said upper platform and to oppose movement of said upper platform from said raised position to said lowered position. George, Berry et al. and Japanese document '258 all teach an L-shaped hinge (see Figs. 2, 8 and 2 respectively). It would have been considered obvious to one of ordinary skill in the art to modify Sherman by substituting the headboard means as taught by either Merrill '851 or 850 for the headboard means disclosed by Sherman and to substitute the L-shaped hinge as taught by either George or Berry et al. or Japanese document '258 for the hinge (66, see Sherman col. 6) disclosed by Sherman since it is a design choice to substitute equivalent parts for performing equivalent functions. Such a modification reduces the complicated counterbalancing mechanism taught by Sherman.

6. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman in view of either Merrill '851 or 850 and George or Berry et al. or Japanese document (53-32258) as applied to claim 5, above, and further in view of Jones (US 6212710).

Sherman (as modified above) discloses the invention substantially as claimed.

However, Sherman (as modified above) lacks a frame that is cabinet. Jones teaches a

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cabinet frame (see Figs. 1-4). It would have been considered obvious to one of ordinary skill in the art to further modify Sherman (as modified above) by having his frame as a cabinet as taught by Jones since such a modification provides adequate storage as well as enhance the aesthetic appearance.

7. Claims 35, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman '276 in view of Condell (US 379449) and George (US 4283811) or Berry et al. (US 3591247) or Japanese document (53-32258)

Sherman discloses a convertible furniture assembly comprising: a frame assembly (see Figs. 5,10); an upper platform (38) pivotally (40) coupled to said frame assembly for supporting a bedding component, said upper platform being moveable between a raised position and a lowered position (see Figs. 5,10), and a counterbalance member (42, 56, see col. 8 line 60+, see Fig. 7) coupled to said upper platform, said counterbalance member being raised between a first position and a second position in response to said upper platform moving from said raised position to said lowered position. A lower platform (64), a hinge (66, see col. 5 line 1, line 50, col. 6 line 20+) connecting the lower platform to the upper platform. A biasing spring member (58, col. 2 line 23+, col. 4 line 31+, col. 5 line 56+, col. 8 line 60+). Sherman discloses the invention substantially as claimed. However, Sherman lacks a headboard member being raised solely vertically between a first position and a second position in response to said upper platform moving from said raised position to said lowered position to counterbalance said upper platform and to oppose movement of said upper platform from said raised position to

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said lowered position and a torsion system. Further, Sherman is silent about using an L-shaped hinge.

Condell teaches a headboard member (k) being raised solely vertically between a first position and a second position in response to said upper platform moving from said raised position to said lowered position to counterbalance said upper platform and to oppose movement of said upper platform from said raised position to said lowered position and a torsion system (1L). George, Berry et al. and Japanese document '258 all teach an L-shaped hinge (see Figs. 2, 8 and 2 respectively). It would have been considered obvious to one of ordinary skill in the art to modify Sherman by substituting the headboard means and spring means as taught by Condell for the headboard and spring means disclosed by Sherman and to substitute the L-shaped hinge as taught by either George or Berry et al. or Japanese document '258 for the hinge (66, see Sherman col. 6) disclosed by Sherman since it is a design choice to substitute equivalent parts for performing equivalent functions. Such a modification reduces the complicated counterbalancing mechanism taught by Sherman.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 5, 12, 20, 22 and 35 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

9. Claim 4 is allowed.

10. Claims 3,24,25,37,38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh  
Primary Examiner  
Art Unit 3673



SS



10/15/05